property owned by a person who is an enemy national irrespective of the destination of the property.

I conclude that these cigars the property of a German national who was not residing in any part of the British Empire at the time when the cigars were seized must be regarded as enemy property, and I make an order that the proceeds of the sale of these cigars be retained in Court.

Order accordingly.

YEO CHIANG SWEE vs. G. F. STRICKLAND.

[Orig. Civil Juris. (Terrell, J.A.) November 17, 1941]

Landlord and tenant—Waiver of Notice to Quit —Agreement for new tenancy.

The plaintiff being the landlord of the dwelling house occupied by the defendant on a monthly tenancy obtained from the Rent Assessment Board leave to take proceedings to eject the defendant. He gave the defendant notice to quit expiring on the 31st of August 1941. The defendant applied to the Rent Assessment Board on the 11th July 1941 to set aside their previous order. The Board on the 12th of August 1941 refused the application. On the 29th of August 1941 the defendant again applied to the Board to set aside their order of the 12th of August 1941, that is to say, the order refusing to vary the order giving leave to eject. The application was heard on the 2nd of September 1941 and was refused but on that occasion Counsel for the defendant asked for an extension until the end of September. The Board considered this reasonable and asked plaintiff's Counsel if he would agree. Plaintiff's Counsel agreed. On the 2nd of September 1941 the defendant paid to plaintiff the rent for September. On the 6th of October the plaintiff commenced an action for ejectment. The defendant applied for leave to defend and set up (inter alia) waiver of the notice to quit.

Held, that the original tenancy had expired on the 31st of August and there had been a new agreement for a new tenancy to expire on the 30th of September and therefore no question of a notice to quit arose.

Cases referred to:—

(1) *Hartell v. Blackler* 1920 2 K.B. 161.

(2) *Davis v. Bristow* 1920 3 K.B. 428.

(3) *Penrhos College Ltd. v. Butler* 1920 3 K.B. 428.

SUMMONS FOR JUDGMENT.

T. W. Ong for plaintiff.

C. H. Withers-Payne for defendant.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Terrell, J.A. The plaintiff is the owner of premises known as No. 6 Orange Grove Road, Singapore. For some months before March 1941 the defendant had been the tenant of the house on a monthly tenancy, but in March he was not in occupation, having sublet. About this time the plaintiff received notice to quit the premises which he himself was occupying, and required No. 6 Orange Grove Road for his own use. The defendant was not willing to give up possession, and on the 5th March 1941 the plaintiff applied under the provisions of s. 8 of the Increase of Rent (Restriction) Ordinance 1939, to eject him. The application came before the Rent Board on the 25th March 1941, when the plaintiff was given liberty to proceed. Notice to quit was duly given and when not complied with, ejectment proceedings were commenced. The defendant alleged that he was entitled to two months' notice. Without contesting this point, the plaintiff discontinued, and gave a fresh notice to quit the premises on or before the 31st August 1941.

On the 11th July 1941 the defendant applied to the Rent Board to set aside their previous order on the ground (inter alia) that the plaintiff had alternative accommodation in a house belonging to him and known as No. 11 Bishopsgate, Singapore. The application came before the Board on the 22nd July, when the plaintiff offered 11 Bishopsgate to the defendant if he vacated 6 Orange Grove Road. The hearing was adjourned to enable defendant's counsel to consult his client. The plaintiff gave the defendant the keys of 11 Bishopsgate and the latter went over the house, incidentally leaving it with all the doors and windows open. On the 4th August he refused to accept 11 Bishopsgate as alternative accommodation. When the application was heard on the 12th August 1941, the Board refused to review the previous order.

Notwithstanding this rebuff the defendant was not discouraged, and on the 29th August 1941 made yet one more application to the Rent Board to set aside their order of the 12th August, that is to say, the order refusing to vary the previous order of the 25th March. It appeared that having refused 11 Bishopsgate on the 4th August, the defendant had changed his mind when the Board rejected his application on the 12th August, and was now prepared to accept the alternative accommodation previously offered. The plaintiff, however, was not prepared to renew his offer. The application was heard on the 2nd September. Dr. Withers Payne, defendant's counsel, admitted that it was not a legal requirement that alternative accommodation should be offered. There is no record of any other argument presented to the

Board, and counsel concluded with a request for one month's suspension. The Board considered this reasonable, and asked plaintiff's counsel if he would agree to not ejecting defendant before the 30th September. Mr. Ong, on behalf of the plaintiff acceded to this suggestion. The Board however again refused to revise its previous decision that the plaintiff should be at liberty to eject the defendant.

After the hearing by the Board on the 2nd September the plaintiff's solicitors received a cheque for the September rent. In acknowledging the cheque that same afternoon, the plaintiff's solicitors wrote to the defendant's solicitors as follows:—

"Our client states, in view of the opinion expressed by the Rent Board this afternoon, that he is quite prepared to allow your client to remain on the premises until the 30th September 1941. It is however to be clearly understood that no further extension of time will be granted to your client after the 30th September 1941 and that the notice to quit still stands."

The defendant's solicitors acknowledged this letter without comment the following day.

Now the Ordinance was amended on the 4th July 1941, that is to say, s. 8 had been amended before either of the defendant's applications to the Rent Board on the 11th July and the 29th August 1941 to set aside the order of the Board of the 25th March 1941. In view of Dr. Withers Payne's arguments before me, it is not a little remarkable that the proceedings before the Board gave no indication that Dr. Withers Payne submitted that in view of proviso (d) to the amended s. 8, the Board should have set aside its previous order, and left the decision to the Supreme Court. It is also remarkable that notwithstanding the very clear terms of the letter of the 2nd September, the defendant's solicitors never suggested in their reply that the acceptance of the September rent had resulted in a waiver of the notice to quit.

At the end of September the defendant still refused to quit the premises, and on the 6th October 1941 the plaintiff commenced the present action, and after appearance by the defendant, took out the present summons for summary judgment under the provisions of Order XIV. In answer to the plaintiff's affidavit in support of the Summons, the defendant alleged that the cheque for the September rent had been drawn on the 30th August and had been received by the plaintiff. The plaintiff's affidavit in reply made it clear that the cheque had not been received until after the hearing on the 2nd September, and the cheque itself showed that it had been cleared on the 3rd September.

In general a summons under Order XIV comes before the Registrar, but in view of the fact that the Registrar was also the President of the Rent Assessment Board, the summons was heard in chambers by myself on the 3rd November 1941. On the hearing before me Dr. Withers Payne argued that the notice to quit had been waived by the subsequent acceptance of rent. No other legal point was put forward. Dr. Withers Payne gathered that I was against him on that point, and right at the end of the hearing said that he could not agree all the facts alleged in the plaintiff's affidavit. I should mention that the argument had taken a full hour and that there had not previously been any suggestion that there was any dispute as to the facts. I accordingly adjourned the summons for one week to enable the defendant to file a further affidavit if so advised. A further affidavit was filed by the defendant on the 7th November 1941. In paragraph 2 he swears on information given to him by his solicitor (he was not present himself) that at the hearing before the Rent Board on the 2nd September there was no understanding or condition that if the defendant were authorised to remain in possession until the end of September the notice to quit should still stand. This paragraph was answered by the plaintiff in an affidavit on the 8th November 1941, in which he states that he was present and that such an understanding was distinctly agreed. There is therefore a conflict of evidence on this point. In the view I take of this case it is entirely irrelevant whether there was such an understanding or not, and I find that there is no dispute on any fact relevant to a decision on the issues raised.

In his affidavit of the 7th November the defendant for the first time raised a defence under proviso (d) of s. 8 of the Ordinance, and this was the only point argued before me at the second hearing in chambers on the 10th November. I had not at the time had the opportunity of studying the proceedings before the Rent Board, or of fully considering the amendment to s. 8 of the Ordinance, and as there seemed to be prime facie an arguable point of law, I gave leave to defend. The plaintiff thereupon applied under the provisions of Order LI r. 23 for an adjournment into Court for further argument, and I directed that the summons be adjourned into open Court. The hearing took place before me on the 14th November 1941, when judgment was reserved.

It is, of course usual to grant leave to defend where there is any serious dispute of fact, or where

there is an arguable point of law. I feel, however, that in the present case I am not precluded from giving a final decision for the following reasons. First the application came direct to a Judge, and not on appeal from the Registrar. Secondly the matter was fully argued before me, no relevant facts are in dispute, and there was no legal argument with which I could not deal as fully on the adjourned summons as I could on the trial of the action. In these circumstances it appeared to me desirable for the speedy determination of the issues, and for saving of costs, that the matter should be finally disposed of.

There were two issues raised by the defendant: (1) the question of waiver by acceptance of rent, and (2) the argument based on proviso (d) of s. 8 of the Ordinance as amended.

As regards waiver, Dr. Withers Payne relied on a decision of the Divisional Court in *Hartell v. Blackler*[1]. In this case the Court upheld the decision of the County Court Judge that acceptance of rent after the expiry of the notice to quit operated as a waiver of the notice. In two subsequent cases, however, *Davies v. Bristow*[2] and *Penrhos College Ltd. v. Butler,* another Divisional Court declined to follow *Hartell v. Blackler.* Neither authority is binding on me, but I have no hesitation in accepting the grounds of judgment given in *Davies v. Bristow.* At p. 437 Lush J. points out that "waiver of a notice to quit" is an inaccurate expression. A breach of a covenant available for forfeiture may certainly be waived because the tenancy is not thereby ipso facto avoided, but only becomes voidable at the landlord's option. He continues: "When once the notice to quit has expired the position of the parties is precisely the same as it would be if the original lease had provided for the determination of the term on the date mentioned in the notice. There is in that case no room for election by the landlord. The landlord and tenant may of course agree that a new tenancy shall be created on the old terms, and that is what in effect they do when they agree that the notice to quit shall be waived. But the agreement to continue the tenancy must be proved."

Applying these considerations to the facts of the case before me, it is clear that the defendant's tenancy expired on the 31st August 1941. Is there any evidence that a fresh agreement was arrived at? I think there is ample evidence. The record of the proceedings before the Rent Board shows that the defendant's counsel asked if he might stay on until the end of September, and plaintiff's counsel accepted the offer. and confirmed the arrangement in a letter of the same date which was acknowledged without comment. I think that this is evidence of an agreement that the defendant should remain in possession until the 30th September 1941 at the same rent. On the 30th September 1941 the new tenancy would expire, and no question of a notice to quit arises. The argument based on waiver was clearly an afterthought, and in view of the consideration with which the plaintiff has treated the defendant, does the latter little credit.